

NO. NHH-CV19-5003875-S

**NYRIEL SMITH,
BY AND THROUGH HER MOTHER
AND LEGAL GUARDIAN
NICHELLE HOBBY;**

**: SUPERIOR COURT/
HOUSING SESSION**

**: JUDICIAL DISTRICT
: OF NEW HAVEN**

**MUHAWENIMANA SARA,
BY AND THROUGH HER FATHER
AND LEGAL GUARDIAN
RUKARA RUGEREZA;**

VS.

CITY OF NEW HAVEN;

**TONI HARP,
IN HER OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF NEW HAVEN;**

**BYRON KENNEDY,
IN HIS OFFICIAL CAPACITY AS
DIRECTOR OF NEW HAVEN
HEALTH DEPARTMENT; AND**

**PAUL KOWALSKI,
IN HIS OFFICAL CAPACITY AS
DIRECTOR OF ENVIRONMENTAL HEALTH,
NEW HAVEN HEALTH DEPARTMENT**

: SEPTEMBER 5, 2019

MOTION FOR LEAVE TO FILE AMENDED CLASS ACTION COMPLAINT

Pursuant to Connecticut Practice Book §10-60, Named Plaintiffs seek leave to file the attached First Amended Class Action Complaint. Named Plaintiffs seek to raise additional claims under New Haven General Ordinances §16-61 et seq. (Count One) and Conn. Gen. Stat.

§ 19a-111 et seq. and its implementing regulations (Count Five) on behalf of Nyriel Smith and the Plaintiff class. Such additional claims arise from Defendants' policy and practice of conducting certain lead hazards inspections pursuant to the Court's temporary injunction order, but then failing to ensure the timely abatement of lead paint hazards in Nyriel Smith's home and in the homes of children with EBLs in excess of 5 µg/dL as evidenced by:

1. Defendants' issuance of an abatement order to the owners of 103-105 Lombard Street (with copy to the family of Nyriel Smith), at which address a certified lead inspector identified lead hazards, without properly identifying the lead hazards requiring abatement and misstating the legal authority for the Defendants' actions in violation of Conn. Agencies Regs. § 19a-111-3(f) and New Haven General Ordinances §§ 16-65(a) and 16-66(a);
2. Defendants' failure to enforce the requirement that the owners of 103-105 Lombard Street submit a written lead abatement plan (LAP) to the Health Department within 5 days from the date of the notification of lead hazards in violation of New Haven General Ordinances § 16-65;
3. Defendants' failure to enforce the requirement that owners of 103-105 Lombard Street commence abatement action in a timely manner as required by Conn. Agencies Regs. § 19a-111-5 and New Haven General Ordinances § 16-66;
4. Defendants' failure to enforce the requirement that the owners of 103-105 Lombard Street implement a lead management plan (LMP) for the management of intact lead based paint on the premises, within 60 (sixty) days of receipt of the inspection report as required by Conn. Agencies Regs. § 19a-111-2; and

5. Defendants' failure to ensure that the owners of 103-105 Lombard Street complete the abatement of identified lead-based paint hazards in a timely manner in violation of Conn. Agencies Regs. § 19a-111-5 and New Haven General Ordinances §16-66(a).

THE PLAINTIFFS,

NYRIEL SMITH
MUHAWENIMANA SARA

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CERTIFICATION

I hereby certify that a copy of the foregoing Motion for Leave to Amend was emailed to the following on September 5, 2019:

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FIRST AMENDED CLASS ACTION COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiff Nyriel Smith is a two year old child who has been poisoned by lead paint in the rental apartment in which she lives at 103-105 Lombard Street, Second Floor, and about which the City of New Haven ["City"] and the Health Department of the City of

New Haven [“Health Department”] have been aware since July 2018 but have failed to ensure proper lead poisoning response and mitigation as required by city and state law.

2. Plaintiff Muhawenimana Sara (“Sara”)¹ is a four year old child who has been poisoned by lead paint in the rental apartment in which she lives at 187 Wolcott Street, First Floor, and about which the City and the Health Department have been aware since February 2018 but have failed to ensure proper lead poisoning response and mitigation as required by city and state law.

3. Pursuant to Practice Book §§ 9-7 and 9-8, Nyriel and Sara bring this action on behalf of a class of all children living in New Haven who are or will in the future be under the age of six and either presently have, or will in the future have, elevated blood lead levels [“EBLs”] in excess of 5 micrograms per deciliter (µg/dL) while under the age of six.

4. Defendant City of New Haven is a municipal corporation, empowered and required by state law and city ordinances to ensure the health and safety of its residents.

5. Defendant Toni Harp is the Mayor of the City of New Haven, empowered and required by state law and city ordinances to be its chief executive and administrative officer, with ultimate responsibility to ensure that the City is in compliance with all laws. Mayor Harp is sued in her official capacity.

6. Defendant Byron Kennedy is the Director of the Health Department of the City of New Haven [“Director of Health”], empowered and required by state law and city ordinances to be responsible, on behalf of the City, for lead poisoning prevention and

¹ Pursuant to custom in her native Democratic Republic of the Congo, Muhawenimana Sara does not have a first and last name. She is called “Sara” since she immigrated to the United States and will be referred to as “Sara” herein.

controls, with particular responsibilities for pediatric lead poisoning prevention and controls. Dr. Kennedy is sued in his official capacity.

7. Defendant Paul Kowalski is the Director of the Environmental Health Program of the Health Department of the City of New Haven with responsibilities under state and city law to protect all children under the age of six who are found to have an elevated blood lead level of 5 µg/dL or higher. Mr. Kowalski is sued in his official capacity.

FACTS RELATING TO NAMED PLAINTIFF NYRIEL SMITH

8. Nyriel Smith lives with her mother in an apartment at 105 Lombard Street, Second Floor, in New Haven, Connecticut. The multifamily building was built prior to 1978, a time in which lead paint was legal and widely used in exterior and interior residential house painting.

9. The apartment at 105 Lombard Street has chipping and flaking paint on the exterior common area front porch railings and columns, the exterior front door and door frame, and in window frames, window sills, and door frames throughout the inside of the premises.

10. Nyriel moved into the apartment in March 2018. Her blood lead level was normal at the time.

11. The Health Department was first notified of the imminent serious health risk to Nyriel's health in July 2018 when, as a two year old, she was found to have an elevated blood lead level of 8 µg/dL.

12. Dr. Carl Baum, the Director of the Yale New Haven Children's Hospital Lead Poisoning and Regional Treatment Center ("Yale Lead Clinic"), has diagnosed Nyriel with plumbism, also known as "lead poisoning," given that her EBL is at or above 5 µg/dL.

13. The results of Nyriel's first blood draw, taken in July 2018 by a local medical laboratory, was immediately sent to the Connecticut Department of Public Health ["DPH"] because medical laboratories are required by state law to notify DPH of all children under six with EBLs at or above 5 µg/dL. See Conn. Gen. Stat. § 19a-100.

14. DPH immediately sent Nyriel's lead blood test results to the Health Department, as required by state law. See id.

15. Upon notification by DPH that Nyriel had an EBL at or above 5 µg/dL, Defendants had an obligation under city and state law to take immediate action to respond to Nyriel's blood poisoning and protect her health, beginning with conducting an inspection of her home for lead paint hazards ("lead hazards inspection"), which includes visual inspection, x-ray fluorescence analysis, and dust wipes to identify the source of the lead poisoning and sending written notice to her mother with information including actions her mother could take to mitigate lead hazards and get resources to assist Nyriel with any lead poisoning injuries already sustained.

16. The Health Department made no effort to contact the family when Nyriel first tested positive for blood lead poisoning.

17. Nyriel again tested positive for blood lead poisoning on August 27, 2018, with an EBL of 6 µg/dL.

18. This second test result was sent from the medical laboratory immediately to DPH and then immediately to the Health Department.

19. After this second lead poisoning result, pursuant to its then existing lead inspection rule to do lead inspections for all children six years old or younger with EBLs of 5 µg/dL or higher, the Health Department called the family on September 7, 2018 and

September 18, 2018 to schedule the lead hazards inspection required by city law. The Health Department did not reach the family upon either call and took no further action to reach the family to conduct the lead hazards inspection.

20. Shortly thereafter, the Health Department changed its lead hazards inspection rule, deciding to no longer conduct lead hazards inspections to identify and abate lead hazards for children six years old or younger unless the child has a first reported EBL of 20 $\mu\text{g/dL}$.

21. Nyriel tested positive for blood lead poisoning three additional times in December 2018 (11 $\mu\text{g/dL}$), January 2019 (9 $\mu\text{g/dL}$), and February 2019 (11 $\mu\text{g/dL}$)

22. On each of these three dates, the medical laboratory sent the test results immediately to DPH which then sent them immediately to the Health Department.

23. Under its new lead hazards inspection rule, the Health Department made no efforts to contact the family to conduct a lead hazards inspection in response to the three new EBLs.

24. On February 8, 2019, seven months after lead poisoning was first reported to the New Haven Health Department, Nyriel's blood lead level had reached 11 $\mu\text{g/dL}$.

25. On April 11, 2019, counsel for Nyriel contacted counsel for the Health Department to request a lead hazards inspection of the premises.

26. Counsel for the Health Department notified counsel for Nyriel that the Health Department would not schedule an inspection of the premises.

27. On May 16, 2019, Named Plaintiffs filed the present action.

28. On June 17, 2019, the Court ordered Defendants to conduct a full lead hazards inspection at Nyriel's residence.

29. On June 26, 2019, the Health Department conducted an inspection of Nyriel's residence and determined that lead hazards existed in the interior of her family's apartment as well as in the exterior and common areas.

30. On July 2, 2019, the Health Department sent a certified letter to the owners of Nyriel's residence, stating that the Health Department had inspected the premises at 105 Lombard Street, 2nd floor on June 26, 2019, and said inspection had "revealed the presence of toxic levels of lead in paint (intact and defective)" in 41 locations as well as "cracked, chipped, blistered, flaking, loose or peeling paint" in 9 additional locations, "determined that the presence of such lead-based paint and chipped and flaking paint constitutes health hazards" and ordered the owners to "remedy these conditions." A copy of this letter (hereinafter referred to as "abatement order") is attached hereto as Exhibit A. Abatement orders are required by Conn. Agencies Regs. § 19a-111-3(f) and New Haven General Ordinances §§ 16-65(a) and 16-66(a).

31. A copy of the abatement order, signed by the Acting Director of the New Haven Health Department, was sent to Nyriel's mother whose child is within the zone of interests protected by the requirements of city and state lead poisoning protection laws.

32. The abatement order does not specify the precise locations requiring abatement. Under city and state law, owners are required to abate all defective lead-based surfaces, all lead-based surfaces accessible to children ("chewable surfaces") whether or not that surface is defective, and all lead-based movable parts of windows and surfaces that rub against movable parts of windows. See New Haven General Ordinances § 16-65(a) ("Lead shall be completely removed from any surface which can be accessible to children. Cracked, chipped, blistered or peeling paint shall be removed completely."); see also Conn. Agencies

Regs. § 19a-111-1(28) (defining “defective surface” as “peeling, flaking, chalking, scaling or chipping paint; paint over crumbling, cracking or falling plaster, or plaster with holes in it; paint over a defective or deteriorating substrate; or paint that is damaged in any manner such that a child can get paint from the damaged area”).

33. The abatement order simply lists places where toxic levels of lead paint (intact and defective) were found by the certified lead inspector, without describing whether a particular area is defective or chewable, or otherwise requires abatement under city and state law.

34. The abatement order incorrectly requires the owner to properly abate “all interior and exterior lead paint” without regard to whether the lead paint area is defective or otherwise required to be abated under city and state law.

35. The abatement order further misstates the legal basis for the Health Department’s order of abatement, citing “New Haven Code of Ordinances, Section 55-63, Maintenance; Section 55-64, Hazardous conditions, Subsections a, b, and c.” The provisions cited do not exist in city law.

36. Upon information and belief, Defendants have taken no action to secure the owner’s compliance with the requirement to submit a lead abatement plan (“LAP”) to the Health Department within 5 working days from receipt of the letter, as required by New Haven General Ordinances § 16-65 (15 days under Conn. Agencies Regs. § 19a-111-5). Such lead abatement plan must be in place and approved by the Health Department before any abatement work can commence. See New Haven General Ordinances § 16-65(c); see also Conn. Agencies Regs. § 19a-111-4. Said plan must describe the repair work necessary prior to abatement, the methods to be utilized to abate all areas requiring abatement, occupant

protection, worksite containment, clean-up procedures, waste disposal plan, and estimated starting and completion dates. See Regs. Conn. State Agencies § 19a-111-4 (a).

37. Because no lead abatement plan is in place, and lead abatement work has not commenced, now over a year since Nyriel was first found to have an elevated blood lead level of 8 µg/dL, Defendants have violated their duty to abate lead hazards within a reasonable timeframe, as required by New Haven General Ordinances § 16-66(a) and Conn. Agencies Regs. § 19a-111-5.

38. Defendants have failed to ensure that the owners of 103-105 Lombard Street have implemented a written lead management plan (“LMP”), identifying the location of intact lead surfaces and describing how these intact surfaces will be monitored on a regular basis by the owners to ensure that if they become defective, the surfaces will be identified and abated as required by Conn. Agencies Regs. § 19a-111-2.

39. Defendants have no policies or practices for proper lead poisoning hazards protections for the plaintiff class, as required by city and state law, to: (a) ensure timely lead hazards inspections of the homes of members of the plaintiff class; (b) issue proper abatement orders; (c) ensure the posting of written notice on premises of residential units determined to have lead based paint hazards; (d) identify and inspect homes of children under six years of age located in a building in which another unit has been determined to have lead-based paint hazards; (e) ensure the timely submission and approval of a lead abatement plan for the mandated lead hazards abatement; (f) ensure abatement of the premises of class members whose homes are determined to have lead-based paint hazards; and (g) ensure implementation of a lead management plan to identify and monitor intact lead based surfaces to ensure that they do not become defective.

40. Such violations of city and state law has caused, and will continue to cause, irreparable injury to Nyriel. She has been, and continues to be, poisoned by toxic levels of lead hazards in her home. She suffers from significant development delays and intellectual disabilities, which emerged with regression and loss of language at the age of two when her blood lead levels first tested at above 5 µg/dL. Defendants have failed to take legally required action necessary to protect and mitigate from continued life-long neurological injury.

41. Defendants' failure to follow their state law requirements to send notice of Nyriel's elevated blood lead level to her parents and provide statutorily mandated information has also caused, and will continue to cause, irreparable injury to Nyriel because the failure means that Nyriel's mother does not have the information and resources to protect and mitigate from continued life-long injury to her child.

FACTS RELATING TO NAMED PLAINTIFF MUHAWENIMANA SARA

42. Muhawenimana Sara ("Sara") lives with her parents and three young siblings in an apartment at 187 Wolcott Street, First Floor, in New Haven, Connecticut. The multifamily building was built prior to 1978, a time in which lead paint was legal and widely used in exterior and interior residential painting.

43. The unit at 187 Wolcott Street has chipping and peeling paint on the exterior of the house, the front door of the house, the common area foyer, and on the doors, door frames, window sills, window frames, and floor boards throughout the interior of the unit, including areas in the bedrooms within reach of the small children in the family.

44. The Health Department was first notified of the imminent serious risk to Sara's health in February 2018 when then three year old Sara had an elevated venous blood lead level of 8 µg/dL.

45. Upon notification by DPH that Sara had an EBL at or above 5 µg/dL, Defendants had an obligation under city and state law to take immediate action to respond to Sara's blood poisoning and protect her health, beginning with conducting a lead hazards inspection to identify the source of the lead poisoning and sending written notice to her parents with information including actions her parents could take to mitigate lead hazards and get resources to assist Sara with any lead poisoning injuries already sustained.

46. Pursuant to its then existing lead inspection rule to do lead inspections for all children under six with EBLs of 5 µg/dL or higher, the Health Department sought to conduct a lead hazards inspection at that time of Sara's first elevated blood lead level. A Health Department inspector made one attempt to contact Sara's family to schedule a lead hazards inspection, an unannounced home visit. Because no one was home at the time of his visit, the inspector left a business card with a note and educational materials in English only. Prior to this visit, the inspector was in communication with the Yale Lead Clinic about the child and was aware that the family spoke Swahili.

47. The Health Department inspector closed the file on April 5, 2018 because he had not heard back from the family.

48. In June 2018, Sara tested positive for blood lead poisoning a second time, with an EBL of 10 µg/dL.

49. The Health Department inspector reopened the Health Department file but never reached out to the family by phone, mail, or home visit.

50. On October 10, 2018, Sara tested positive a third time for blood lead poisoning with an EBL of 9 µg/dL.

51. The Health Department never conducted a lead hazards inspection in response to this third confirmed EBL, notwithstanding that a local refugee resettlement agency had agreed to assist to reach and translate for the family.

52. Shortly thereafter, the Health Department changed its lead hazards inspection rule, deciding to no longer conduct lead hazards inspections to identify and abate lead hazards for children under six years of age unless the first reported EBL was 20 µg/dL or higher.

53. On January 9, 2019, the Health Department closed the file regarding Sara's lead poisoning, with a file note stating that it would not conduct an inspection at the premises.

54. Since the Health Department changed its lead inspection rule, no longer taking action to respond to children with initial EBLs below 20 µg/dL, Sara has tested positive for blood lead poisoning a fourth and fifth time, on February 8, 2019 and April 12, 2019. Each time her EBL was 10 µg/dL.

55. On April 16, 2019, counsel for Sara contacted counsel for the Health Department to request a lead hazards inspection of the premises.

56. Counsel for the Health Department notified counsel for Sara that the Health Department would not schedule an inspection of the premises.

57. The Health Department's failure to conduct a lead hazards inspection of Sara's home has caused, and will continue to cause, irreparable injury to Sara. She has been, and continues to be, poisoned by toxic levels of lead hazards in her home. She suffers from

significant development delays and intellectual disabilities, which emerged with regression and loss of language at the age of three when her blood lead levels first tested at above 5 µg/dL. Defendants have failed to take legally required action necessary to protect and mitigate from continued life-long injury.

58. Defendants' failure to follow their state law requirements to send notice of Sara's elevated blood lead level to her parents and provide statutorily mandated information has also caused, and will continue to cause, irreparable injury to Sara because the failure means that Sara's parents does not have the information and resources to protect and mitigate from continued life-long injury to her child.

CLASS ALLEGATIONS

59. A class action is superior to other available methods of adjudication of the claims brought by the Named Plaintiffs on behalf of the class because joinder of all class members is impractical. See Connecticut Practice Book § 9.7(1). Nyriel and Sara represent approximately 300 children under the age of six with documented blood lead poisoning at or above 5 µg/dL who are entitled to protections under city and state law but for whom the Health Department will now take no action to conduct lead hazards inspections of their homes and order abatement of lead hazards found because their blood lead levels do not equal or exceed 20 µg/dL. The names and addresses of these children are known to Defendants but are not publicly available.

60. There are questions of fact and law common to all members of the class that all class members have suffered due to the Defendants' failure to comply with the requirements of city and state law. See Connecticut Practice Book § 9.7(2).

61. Nyriel's and Sara's claims are typical of the claims of the class. See Connecticut Practice Book § 9.7(3)

62. Named Plaintiffs will fairly and adequately protect the interests of the other class members if designated as class representatives by the Court. See Connecticut Practice Book § 9.7(3). The interests of Named Plaintiffs are coincident with and not antagonistic to the interests of the class, and Named Plaintiffs have retained competent counsel with extensive relative experience.

63. Defendants have acted, or refused to act, on grounds generally applicable to the class making appropriate final injunctive relief with respect to the class as a whole. See Connecticut Practice Book § 9.7(3).

COUNT ONE: CLASS ACTION CLAIM AGAINST MAYOR HARP, THE CITY OF NEW HAVEN, BYRON KENNEDY, AND PAUL KOWALSKI FOR VIOLATION OF NEW HAVEN CITY ORDINANCE REQUIRING MANDATORY LEAD POISONING PROTECTIONS

1. Paragraphs 1 through 63 are hereby incorporated as Paragraphs 1 through 63 of Count One.

64. The City of New Haven governs under the responsibilities and obligations imposed by city ordinances, adopted by the New Haven Board of Alders, under statutory authority provided by state law regarding safe and sanitary housing, including Conn. Gen. Stat. §§7-148(c)(7)(A) and 7-148(c)(7)(H)(xv).

65. To further its role to maintain safe and healthy housing, the Board of Alders has in such capacity enacted lead poisoning prevention ordinances, enacted in New Haven Code of Ordinances. See New Haven City Ordinances §16-61 et seq.

66. New Haven General Ordinances §§§16-64, 16-65, and 16-66 require that the Director of Health and the Department of Health conduct a full lead hazards inspection of

residential units, issue abatement orders to the landlord for any lead hazards founds, and ensure that all lead hazards are abated from the homes for all children with lead poisoning, with lead poisoning defined as the state standard 20 µg/dL or “any other abnormal body burden of lead as defined by the Centers for Disease Control and Prevention.”

67. Since 2012, the Centers for Disease Control and Prevention have defined an elevated blood lead level as a single blood lead test at or above the reference range value of 5 µg/dL, given that blood lead levels in excess of 5 µg/dL are associated with serious adverse, life-long health effects in young children. See <https://www.cdc.gov/nceh/lead/data/definitions.htm>. As such, the city law provides full lead inspection and abatement protections to all children six years old or younger with EBLs at or above 5 µg/dL.

68. New Haven General Ordinances §16-64 mandates that the Director of Public Health “shall issue . . . an order to eliminate the hazard” when “the presence of lead paint upon or in any premises creates a health hazard to children” and “the presence of cracked, chipped, blistered, flaking, loose or peeling paint constitutes a health hazard.”

69. The city ordinance requires that the Department of Health:

(a) shall issue an order to property owners to eliminate the hazard when the director determines that the presence of lead paint upon any interior or exterior premises creates a health hazard to children (§16-65(a));

(b) send such order to the owner of the premises as soon as practicable after detection of lead poisoning hazards (§16-66(a)(1));

- (c) notify residents of the premises that a lead poisoning hazard has been detected in the premises and inform residents that all children within the premises should be tested for lead poisoning (§16-66(b));
- (d) file the notice of landlord violation with the city clerk to be placed on the land records within five days of the issuance of the notice (§16-66(a)(6)); and
- (e) file with the city clerk, to be placed on the land records, notice that required remedial action has been taken and that the premises are no longer in violation of city law (§16-66(a)(6)).

70. Upon receipt of the Health Department order, the landlord must:

- (a) submit a written lead abatement plan within five working days of notification of inspection results which identifies the location of lead-based paint including soil, describes how all lead-based painted surfaces will be abated, and explains how environment, health, and safety will be protected (§§16-61(e) and 16-65(c));
- (b) begin repairs within seven days from landlord receipt of violation notice (§16-66(a)(3)); and
- (c) conduct repairs that comply with methods set forth in city and state law, including removal from any surface that may be accessible to children, with removal to the base surface or covering with an approved durable material, but never repainting a surface with non-leaded paint (§16-65(a)).

71. The New Haven General Ordinances expressly state that the Director of Health has a duty to take over the abatement if a landlord is not compliant with its abatement responsibilities and empowers the City to impose a lien to recoup costs incurred from taking over the abatement from a noncompliant landlord. See §16-66(e) and (g).

72. Upon notice in July 2018 that named Plaintiff Nyriel Smith's blood lead levels exceeded the city ordinance standard of 5 µg/dL, the Health Department was required to take the above-mandated action, starting with a lead hazards inspection and an order to the landlord to abate any lead hazards found.

73. Upon notice in February 2018 that named Plaintiff Muhawenimana Sara's blood levels exceeded the city ordinance standard of 5 µg/dL, the Health Department was required to take the above mandated action, starting with a lead hazards inspection and an order to the landlord to abate any lead hazards found.

74. These obligations continue through the present as both children have had repeated and continued reportings of blood lead levels above 5 µg/dL.

75. As such, the Defendants have violated the rights of Nyriel, Sara and all class members, as set forth in New Haven General Ordinances §§16-61 et seq. by failing to have policies and practices that ensure:

- (a). timely lead hazards inspection of the homes of members of the plaintiff class, as required by New Haven General Ordinances §§ 16-64 and 16-65;
- (b). issuance of proper abatement orders to owners and families of members of the plaintiff class for any lead hazards found, as required by New Haven General Ordinances §§ 16-65(a) and 16-66(a);
- (c). provision of written notice to other residents of the premises that a lead poisoning hazard has been detected within the premises and informing such other residents that all children within the premises should be tested for lead poisoning, as required by New Haven General Ordinances § 16-66(b);

- (d). timely submission and approval of a lead abatement plan, prepared by a certified lead inspector, as required by New Haven General Ordinances § 16-65(c); and
- (e). timely abatement of all lead paint hazards, as required by New Haven General Ordinances § 16-66.

COUNT TWO: CLASS ACTION CLAIM AGAINST MAYOR HARP FOR VIOLATION OF SEPARATION OF POWERS BY INFRINGEMENT ON THE LEGISLATIVE AUTHORITY OF THE BOARD OF ALDERS

1. Paragraphs 1 through 63 are hereby incorporated as Paragraphs 1 through 63 of Count Two.

64. The Connecticut Constitution and its governing statutes set forth that City of New Haven must have both: (1) a legislative body elected by the people to adopt, amend, and repeal ordinances; and (2) an executive officer, who does not even necessarily need to be elected by the people, with powers and duties as prescribed by the City Charter. See Constitution of the State of Connecticut, Article Tenth and Conn. Gen. Stat. § 7-193(a)(1) and (2).

65. The Charter of the City of New Haven (“Charter”) establishes the authority of the distinct legislative and executive branches, with the Board of Alders as the sole legislative body, vested with the powers to make laws to provide for the health of the City. See New Haven City Charter, Article IV(4)(B)(12).

66. The Mayor is delineated as the chief executive and administrative officer, who has the ultimate authority to ensure that the City is in compliance with city law, but has no authority to legislate and enact new city law. See New Haven City Charter, Article III(1)(A) and (2)(A) and (2)(B).

67. For more than five years, and until recently, the Mayor ensured that the City

and the Department of Health complied with the New Haven City Ordinance Article III, § 16-61 et seq., commencing full lead hazards inspections for all children under age six with reported EBLs of 5 µg/dL or higher and ordering and enforcing abatement of any lead hazards found.

68. The Mayor abrogated existing city law and unlawfully enacted a new law on or about November 29, 2018, in direct violation of the explicit city ordinance, whereby she either instructed or agreed to allow the Department of Health to no longer conduct full lead hazards inspections for all children under age six who are reported to the Health Department as having a blood lead level at or above 5 µg/dL, instead providing such inspections to children with a first reported EBL of 20 µg/dL only.

69. The Named Plaintiffs and members of the class are aggrieved by the actions of the Mayor because such actions have resulted in the loss of their rights to have their homes inspected and any necessary abatement completed to protect them from the harmful effects of such lead hazards.

70. As such, the Mayor has violated her constitutional mandate to not infringe on the legislative authority of the Board of Alders, thus violating the rights of Nyriel, Sara, and all class members.

COUNT THREE: CLASS ACTION CLAIM AGAINST THE CITY OF NEW HAVEN, BYRON KENNEDY AND PAUL KOWALSKI FOR VIOLATION OF SEPARATION OF POWERS BY INFRINGEMENT ON THE LEGISLATIVE AUTHORITY OF THE BOARD OF ALDERS

1. Paragraphs 1 through 63 are hereby incorporated as Paragraphs 1 through 63 of Count Three.

64. The City Charter enables the Board of Alders to establish administrative

departments, by ordinance, as necessary to carry out and organize the functions of government. See New Haven City Charter, Article VI(1)(A).

65. The Department of Health is one such properly constituted administrative department.

66. The City Charter establishes that the Department of Health has the authority to perform duties and take such other measures for the prevention of disease and the preservation of public health as provided by the city ordinances only. See Charter Article IV(15)(C)(3).

69. For more than five years, and until recently, the City of New Haven, the Director of Health, and the Director of Environmental Health ensured that the City and the Department of Health complied with the New Haven City Ordinance Article III, § 16-61 et seq., commencing full lead hazards inspections for all children under age six with reported EBLs of 5 µg/dL or higher and ordering and enforcing abatement of any lead hazards found.

70. The City of New Haven, the Director of Health, and the Director of Environmental Health abrogated existing law and unlawfully enacted a new rule, with the intended force of law, on or about November 29, 2018, in direct violation of the explicit city ordinance, whereby the Department of Health no longer conducts full lead hazards inspections for all children under the age of six who are reported to the Health Department as having a blood lead level at the CDC level of concern, instead providing lead hazards inspections to children who meet the state standard of a first reported EBLs of 20 µg/dL only.

71. The Named Plaintiffs and members of the class are aggrieved by the actions of the City, Director of Health, and Health Department because such actions have resulted in

the loss of their rights to have their homes inspected and any necessary abatement completed to protect them from the harmful effects of such lead hazards.

72. As such, the City, Dr. Kennedy, and Mr. Kowalski overstepped their regulatory authority, violating the rights of Nyriel, Sara, and all class members, when they enacted a new rule to no longer conduct lead hazard inspections for all children under age six with EBLs of 5 µg/dL or higher.

COUNT FOUR: CLASS ACTION CLAIM AGAINST MAYOR HARP, THE CITY OF NEW HAVEN, BYRON KENNEDY, AND PAUL KOWLASKI FOR DEPRIVATION OF NOTICE AND PUBLIC COMMENT AS REQUIRED BY THE CITY CHARTER

1. Paragraphs 1 through 63 are hereby incorporated as Paragraphs 1 through 63 of Count Four.

64. For more than five years, and until recently, the Defendants had a lead hazards inspection rule that complied with the city ordinances, commencing full lead hazards inspections for all children under age six with reported EBLs of 5 µg/dL or higher and ordering and enforcing abatement of any lead hazards found. See City Ordinance Article III, § 16-61 et seq.

65. To the extent to which the Defendants' decision to conduct inspections for children who have blood lead levels in accordance with the state standard of 20 µg/dL only could be construed as a modification of an existing rule within the regulatory authority of the Department of Health, the Department of Health would be required to submit such rule change to notice and public comment as required by the City Charter.

66. The Charter of the City of New Haven states that the Board of Public Health, on the recommendation of the Director of Public Health, shall have the power to adopt rules

but only when such rules or regulations have been vetted through Public Notice on at least four (4) separate occasions. See New Haven City Charter, Article III(3)(I)(3).

67. The Defendants failed to provide any public notice before enacting the change in its rule regarding when it conducts lead inspections.

68. As such, to the extent that the Defendants had any power to change the action standard for lead investigations, this change violated the rights of Nyriel, Sara, and all class members to the mandatory regulatory process as set forth in the Charter of the City of New Haven.

COUNT FIVE: CLASS ACTION CLAIM AGAINST MAYOR HARP, THE CITY OF NEW HAVEN, BYRON KENNEDY, AND PAUL KOWLASKI FOR VIOLATION OF STATE LEAD POISONING PROTECTION LAWS

1. Paragraphs 1 through 63 are hereby incorporated as Paragraphs 1 through 63 of Count Five.

64. Conn. Gen. Stat. § 19a-110(d) requires that upon the initial report of a child with an EBL at or above 5 µg/dL that the Director of Health must give the parent/guardian of the child information describing the dangers of lead poisoning, precautions to reduce the risk of lead poisoning, information about potential eligibility for services for children from birth-to-three programs, and lead abatement laws and regulations including the rights of federally subsidized tenants to lead inspections for all children with EBLs of 5 µg/dL or higher. See Conn. Gen. Stat. § 19a-110(d); see also HUD Notice PIH 2017-13 (HA); OHHLHC 2017-01, “Guidance on HUD’s Lead Safe Housing Rule Pertaining to Elevated Blood Lead Levels for the Public Housing, Housing Choice Voucher, and Project-Based Voucher Programs” (explaining that the 2017 Lead Safe Housing Rule requires lead inspections and abatement in all federally subsidized housing when a child under six has an EBL of 5 µg/dL or higher).

65. The Defendants did not provide the parents/guardians of Nyriel and Sara nor any class members with the information required by state law.

66. As such, the Defendants have violated the rights of Nyriel, Sara, and all class members to information required by state law to be provided to their parents necessary to lessen existing lead poisoning, protect from further lead poisoning, and address and deal with permanent health effects from lead poisoning.

67. Furthermore, the Defendants have violated the rights of Nyriel and all class members under Conn. Agencies Regs. 19a-111-3(d), which applies all state lead hazards protections to all plaintiff class members whenever any certified lead inspector finds a toxic level of lead requiring abatement regardless of whether the child meets that state standard to require an inspection, by failing to have policies and practices that ensure:

- (a). issuance of proper abatement orders to owners and families of members of the plaintiff class, as required by Conn. Agencies Regs. §19a-111-3(f);
- (b). posting of written notices at the entrances to each dwelling unit and the common areas of all premises determined to have lead paint hazards, within two days of receipt of the inspection report, as required by Conn. Agencies Regs. § 19a-111-3(e);
- (c) identification of children under the age of six living in buildings in which lead paint hazards have been identified for purpose of a timely inspection of such homes, pursuant to Conn. Agencies Regs. § 19a-111-3(c)(2).
- (d). timely submission and approval of lead abatement plans, prepared by a certified lead inspector, as required by Conn. Agencies Regs. §§ 19a-111-4 and 19a-111-5;
- (e). timely abatement of all lead paint hazards, as required by Conn. Agencies Reg. § 19a-111-5; and

(f). implementation of lead management plans for the homes of class members determined to have toxic levels of lead paint, within sixty days of the receipt of the inspection report, as required by Conn. Agencies Reg. § 19a-111-2.

WHEREFORE, the Named Plaintiffs, for themselves and on behalf of the class, request the following relief from the Court to:

1. Certify a class of all children living in New Haven who are, or will in the future be, under the age of 6 and either presently have, or will in the future have, elevated blood lead levels in excess of 5 µg/dL while under the age of 6.

2. Enter a Preliminary and Permanent Injunction as to Named Plaintiff Nyriel Smith requiring Defendants to comply with city and state law and conduct an immediate lead hazards inspection at 105 Lombard Street, Second Floor, to determine all sources of lead in the interior, exterior, and soil of the premises; send an abatement order to the owner of the premises if lead hazards are found; and ensure that abatement is completed in a timely fashion, including taking over the abatement and relocating the child if necessary to protect from any lead hazards if abatement is not conducted timely, in order address the irreparable harm presently being caused to her health;

3. Enter a Preliminary and Permanent Injunction as to Named Plaintiff Muhemawima Sara requiring Defendants to comply with city and state law and conduct an immediate lead hazards inspection at 87 Wolcott Street, to determine all sources of lead in the interior, exterior, and soil of the premises; send a factually and legally accurate abatement order to the owner of the premises if lead hazards are found; and ensure that abatement is completed in a timely fashion, including taking over the abatement and relocating the child if

necessary to protect from any lead hazards if abatement is not conducted timely, in order address the irreparable harm presently being caused to her health;

4. Enter a Preliminary and Permanent Injunction as to the members of the class requiring Defendants to comply with city and state law by adopting policies and practices requiring Defendants to conduct immediate inspections of the homes of all class members with EBLs of 5 µg/dL or higher to determine all sources of lead in the interior, exterior and soil of their apartments; send factually and legally correct abatement order to the landlords of any apartments where lead paint hazards are found; inspect the homes of class members living in buildings in which other dwelling units have been determined to have lead paint hazards; and ensure that abatement of the all dwelling units found to have lead paint hazards is completed in a timely fashion, including taking over the abatement and relocating families if necessary to protect from any lead hazards if abatement is not conducted timely, in order address the irreparable harm presently being caused to the health of the class members;

5. Enter a Preliminary and Permanent Injunction as to the Named Plaintiffs and members of the class requiring Defendants to comply with state law and send notices to all class members with EBLs of 5 µg/dL or higher, ensuring that such notices provide the required articulation of laws and regulation, which includes notification that all residents of federally subsidized housing, including Low Income Public Housing tenants, Section 8 Housing Choice Voucher tenants, and Section 8 Project Based Housing tenants, have rights to full lead hazards inspections under federal law for all children under six years of age with EBLs of 5 µg/dL or higher and should contact the relevant Public Housing Authority or Section 8 Contract Administrator;

6. Such other and further relief as justice requires.

**THE PLAINTIFFS,
NYRIEL SMITH
MUHAWENIMANA SARA**

BY:


Shelley White

Juris No. 101201

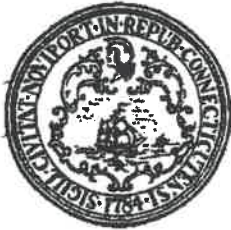
New Haven Legal Assistance

205 Orange Street

New Haven, CT 06510

203-946-4811

swhite@nhlegal.org



**CITY OF NEW HAVEN
DEPARTMENT OF HEALTH
BUREAU OF ENVIRONMENTAL HEALTH**

54 Meadow Street - 9TH Floor • New Haven • Connecticut 06519
Phone 203-946-8174 • Fax 203-946-6509

New Haven



2008

TONI N. HARP
MAYOR

ROSLYN HAMILTON, RS, MPH
ACTING DIRECTOR OF HEALTH

COPY

July 2, 2019

Earlene F. Kelson
Leslie Kelson
103 Lombard Street, 1F
New Haven, CT 06513

CERTIFIED MAIL
7017 3380 0000 3653 7542
7017 3380 0000 3653 7559

RE: 105 Lombard St., 2F, New Haven, CT

Dear Earlene F. & Leslie Kelson:

On June 26, 2019, an inspection of the above referenced premises was made by Ms. Jomika Bogan of this department.

Said inspection revealed the presence of toxic levels of lead in paint (intact and defective), i.e., paint containing more than 0.50 percent lead by dry weight as measured by atomic absorption spectrophotometer or lead at or above 1.0 milligrams per square centimeter of surface, including the dried paint film, as measured on site by x-ray fluorescence spectrum analyzer according to performance characteristic sheets, in the following locations:

Kitchen B

	<u>Lead (mg/cm2)</u>
1. Wall, Side A, Cream	11.1
2. Wall, Side B, Cream	12.3
3. Wall, Side C, Cream	11.2
4. Wall, Side D, Cream	12.3
5. Cabinet Wall, Side D, Cream	5.8

Bathroom B

6. Chair Rail, Tan	1.6
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Bathroom Hall

7. Ceiling	AREA NOT ACCESSIBLE; ASSUME LEAD AND ABATE ACCORDINGLY
8. Wall, Side A, Cream	1.5
9. Wall, Side B, Cream	2.3
10. Wall, Side C, Cream	1.6
11. Wall, Side D, Cream	1.3
12. Wall, Side D, Cream (Cement)	1.3
13. Threshold, Side C	2.4

Rear Common Hall

14. 2F-1F Stairwell Ceiling, White	AREA NOT ACCESSIBLE; ASSUME LEAD AND ABATE ACCORDINGLY
------------------------------------	--

EXHIBIT

tabbles

A

15. 2F-1F Stairwell Wall, Side C, Cream	1.0
16. 1F Ceiling, Cream	6.1
17. 1F Wall, Side B, Cream	1.2
18. 1F Wall, Side D, Cream	1.0
19. Wall Cap, Cream	1.9

Exterior, Side A

20. 2F Column, White	9.3
21. 2F Railing, White	7.1
22. 2F Door Casing, White	10.2
23. 2F Door Stop, Grey	15.0
24. 2F Threshold, Grey	11.2
25. 2F Kick Plate, Red	6.8
26. 2F Door, Grey	5.8
27. 1F Column, White	13.6
28. 1F Railing, Grey/White	9.6
29. 1F Door Casing, White	14.4
30. 1F Door Stop, Blue	13.01
31. 1F Door, Blue	6.7
32. 1F Threshold, Grey	12.04
33. 1F Window Panel (fascia), Blue	7.8
34. 1F Window Panel (fascia) Stop, Blue	13.3
35. 1F Kick Plate, Grey	7.1

Exterior, Side C

36. 2F Porch Overhang Ceiling, Grey	10.7
37. 2F Porch Door Stop, Grey	7.2
38. 2F Porch Threshold, Grey	3.9
39. 2F Porch Door, Grey	6.9
40. 1F Porch Overhang Ceiling, Grey	8.1

Garage/Shed

41. Door (6 Panes), White	3.4
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Said inspection also revealed the presence of cracked, chipped, blistered, flaking, loose or peeling paint in the following locations:

Room AB

1. Wall, Side D, Cream	0.3
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Bedroom/Closet Hall

2. Door Stop	0.2
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Rear Common Hall

3. 2F-1F Stairwell Wall, Side B, Cream	0.8
4. 2F-1F Stairwell Wall, Side D, Cream	0.6

Garage/Shed

5. Window Stop, White	0.4
6. Window Sash, White	0.2
7. Bay Door Casing, White	0.0

- | | |
|-------------------------|-----|
| 8. Bay Door Stop, White | 0.1 |
| 9. Bay Door, White | 0.0 |

The Director of Health has determined that the presence of such lead-based paint and chipped and flaking paint constitutes health hazards. Since there are one or more children with an elevated blood lead level residing on the premises, the aforementioned conditions constitute grounds for issuance of this Order pursuant to General Statutes §§ 19a-111 and 19a-111c, § 19a-111-2 of the Public Health Code and are a violation of Chapter 55, Article III of the New Haven Code of Ordinances, Section 55-63, Maintenance; Section 55-64, Hazardous conditions, Subsections a, b, and c.

As owner/agent-manager of the above referenced premises you are hereby **ordered** to remedy these conditions. A re-inspection will be made upon completion of the work.

You are additionally required to submit to Ms. Jomika Bogan a written lead abatement plan **within five (5) days** from receipt of this letter. The abatement work is not to begin until an abatement plan written by you has been reviewed and approved by this department. This plan shall describe repair work necessary prior to abatement, the methods to be utilized to abate all areas requiring abatement, occupant protection, work-site containment, clean up procedures, and a waste disposal plan. An abbreviated version of an abatement plan has been provided as a guide.

Notices of toxic levels of lead must be posted by you at each entrance to the dwelling unit or common area if affected **within two (2) working days** from receipt of this letter. The notice entitled "Warning Notice Toxic Lead Levels" included with this letter is a State Department of Public Health form that may be used for this purpose. The notices are not to be removed until the dwelling unit reaches compliance with this letter.

The above stated violations must be corrected as follows:

- Properly abate all interior and exterior lead paint.
- All holes and cracks in walls and/or ceiling must be repaired in such a manner as to create a smooth, durable, non-broken surface.
- All chipped and flaking paint, wherever it exists, must be thoroughly scraped and removed.
- All lead paint ordered to be removed shall be completely removed to the base surface.
- All doors, door jambs (to include entire door system), windows (to include sills, sashes, casings, and other parts of system), baseboards, walls, etc. which contain a lead hazard must be stripped to the base surface, and all chipped and flaking paint removed to the base surface.
- In lieu of removal of paint, all violations may be covered with an approved, durable, non-lead material so as to make the area inaccessible to children.

The sample locations reported beginning from the first page of this letter are indicative of the lead content of similar painted surfaces found within each room or site, i.e., they are representative samples.

All such surfaces painted with a lead-based paint, whether intact or defective, are to be properly abated or encapsulated. Repainting a surface with a non-lead paint without the complete removal of existing lead-based paint shall not be considered satisfactory compliance with the law.

The methods used in eliminating the cited health hazards must be approved by this office prior to commencement of work. Upon removal of this hazardous paint and prior to repainting, this office must be notified and shall then verify complete removal. As of 6 January 1996, any abatement work contracted by you must be done by a licensed lead abatement contractor.

This order is made pursuant to the authority vested in the Director of Health by Section 19a-200 of the Connecticut General Statutes and Section 55-64 of the New Haven Code of Ordinances. Compliance with these orders is the ultimate responsibility of the owner/agent -manager and must not be delegated to the occupant-tenant.

Any children who occupy the apartment in question are to be excluded from the worksite/apartment while the lead paint abatement efforts are being performed and are not to re-enter the site until all paint chips, dust, and debris have been completely and safely cleaned from the area. In addition, all surfaces (ceilings, walls, floors, moldings, etc.) are to be thoroughly and completely washed with a high-phosphate solution. This is also the responsibility of the owner-agent. It is imperative that the health of the child not be further jeopardized by allowing access to lead paint chips, lead containing dust, and/or lead paint fumes.

Failure to comply with the above stated orders will subject you to prosecution as provided in the Connecticut General Statutes and/or City of New Haven Code of Ordinances.

No dwelling unit which is in violation of Article III, entitled "Lead Paint", shall be re-rented to a new tenant until repairs acceptable to the Director of Health have been made in compliance with the provisions of said article.

When a child resides in dwelling requiring lead abatement, interior dust, drinking water and exterior soil shall be assessed. When soil or sand areas are not covered with grass, sod, other live ground covers, wood chips, gravel, artificial turf, or similar covering are found to contain lead concentrations in excess of 400 parts per million, such bare soil or sand areas shall be abated. When lead dust hazards are found to be a source or a potential source of elevated blood lead in a child, lead dust shall be reduced to a safe level using appropriate cleaning methods.

When lead in drinking water is determined to be a source or a potential source of elevated blood lead in a child, appropriate remedial action approved by the local health director of health shall be implemented. Separate letters regarding possible lead in dust, soil and water may be issued to you, if necessary, once testing results are received.

The Federal Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4852d, requires sellers and landlords of most residential housing units built before 1978 to disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, *including the test results contained in this notice*, to purchasers and tenants at the time of sale or lease or upon lease renewal.

This disclosure must occur even if hazard reduction or abatement has been completed. Failure to disclose these test results is a violation of the U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency regulations at 24 CFR part 35 and 40 CFR Part 745 and can result in a fine of up to \$11,000 per violation. To find out more information about our obligations under federal lead-based paint requirements call 1-800-424-LEAD (5323).

RIGHT OF APPEAL: Connecticut General Statutes Sec. 19a-229 states "Any person aggrieved by an order issued by a town, city or borough director of health may appeal to the Commissioner of Public Health not later than three business days after the date of such person's receipt of such order, who shall thereupon immediately notify the authority from whose order the appeal was taken, and examine into the merits of such case, and may vacate modify, or affirm such order."

There are two ways to appeal this order; both methods require action not later than three business days after you receive the order.

- (1) You may appeal the order by delivering your written appeal to the Department not later than three business days after you receive the order. You may deliver it to the Department either in person or by facsimile. The Department's address and facsimile number are:

Department of Public Health
Public Health Hearing Office
410 Capitol Avenue MS 13 PHO
P.O. Box 340308
Hartford, CT 06134-0308
Facsimile: (860) 509-7553

If you chose this method of appeal, you need do nothing more to perfect your appeal, unless instructed otherwise by the Department.

(2) You may also appeal the order by *calling the Department not later than three business days after receipt of the order* at one of the following numbers: (860) 509-7648 or (888) 891-9177. It is sufficient to leave a message with your name, number and a description of the order you are appealing.

If you appeal the order by calling one of the telephone numbers listed above, *the telephone call must be followed up with a written notice of appeal that must be received by the Department within ten days of the telephonic notice.*

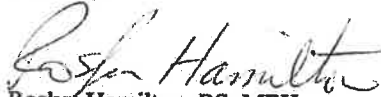
PLEASE NOTE: It is *not* sufficient that the written notification be postmarked within ten days. It must be *received by the department within ten days*. Delays caused by the Post Office will not excuse failure to comply with this requirement.

The written notice of appeal following the telephonic notice may be delivered to the Department in person, by facsimile, or by first class or certified mail. The Department's address and facsimile number are provided above. If you chose to send the written notice of appeal by first class mail or certified mail, please use the address provided below.

Department of Public Health
Public Health Hearing Office
410 Capitol Avenue MS 13 PHO
P.O. Box 340308
Hartford, CT 06134-0308

Please direct any inquiries to Ms. Jomika Bogan at (203) 946-8176.

Sincerely,



Roslyn Hamilton, RS, MPH
Acting Director of Health

RH: jhb

cc: City Town Clerk
Tenant